

§ 655.107

and no further review shall be given to an employer's request for a new H-2A determination by any DOL official. However, this does not preclude an employer from submitting subsequent requests for new determinations, if warranted, based on subsequent facts concerning purported nonavailability of U.S. workers or referred workers not being eligible workers or not able, willing, or qualified because of lawful job-related reasons.

[52 FR 20507, June 1, 1987, as amended at 55 FR 29358, July 19, 1990; 64 FR 34966, June 29, 1999]

EFFECTIVE DATE NOTE: At 65 FR 43543, July 13, 2000, § 655.106 was amended in paragraph (a) by removing the phrase "for temporary alien agricultural labor certification"; in paragraph (b)(1) by removing from the first sentence the phrase "20 calendar days" and adding the phrase "30 calendar days" in lieu thereof; in paragraph (c) introductory text, by removing from the paragraph heading the phrase "temporary alien agricultural labor certifications", and adding in lieu thereof the word "applications"; in paragraph (c)(1) by removing from the first sentence the phrase "Temporary alien agricultural labor certifications are" and adding in lieu thereof the phrase "The application is"; and by removing from the third sentence the phrase "certification shall be" and adding in lieu thereof the phrase "certifications and H-2A petitions shall be"; in paragraph (c)(2)(i) by removing from the first sentence the phrase "certification as a joint employer" and adding in lieu thereof the phrase "certification and H-2A petition as a joint employer" and by removing the phrase "the temporary alien agricultural labor certification granted" and adding in lieu thereof the phrase "the temporary labor certification and petition granted"; by removing from the second sentence the phrase "certification was" and adding in lieu thereof the phrase "certification and H-2A petition were"; by removing from the third sentence the phrase "certifications to associations" and adding in lieu thereof the phrase "certifications and H-2A petitions to associations"; and by removing from the fourth sentence the phrase "certification as a sole employer" and adding in lieu thereof the phrase "certification and H-2A petition as a sole employer"; in paragraph (d) by removing from the first sentence the phrase "certification (in whole or in part)" and adding in lieu thereof the phrase "certification and H-2A petition (in whole or in part)"; in paragraph (e)(1) by removing the phrase "a temporary agricultural labor certification" and adding in lieu thereof the phrase "an application"; in paragraph (h) by removing from the first sentence the phrase

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"20 calendar days" and adding in lieu thereof the phrase "30 calendar days", effective Nov. 13, 2000. At 65 FR 67628, Nov. 13, 2000, the effective date was delayed until Oct. 1, 2001.

§ 655.107 Adverse effect wage rates (AEWRs).

(a) *Computation and publication of AEWRs.* Except as otherwise provided in this section, the AEWRs for all agricultural employment (except for those occupations deemed inappropriate under the special circumstances provisions of § 655.93 of this part) for which temporary alien agricultural labor certification is being sought shall be equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the U.S. Department of Agriculture (USDA) based on the USDA quarterly wage survey. The Director shall publish, at least once in each calendar year, on a date or dates to be determined by the Director, AEWRs for each State (for which USDA publishes regional data), calculated pursuant to this paragraph (a) as a notice or notices in the FEDERAL REGISTER.

(b) *Higher prevailing wage rates.* If, as the result of a State agency prevailing wage survey determination, the prevailing wage rate in an area and agricultural activity (as determined by the State agency survey and verified by the Director) is found to be higher than the AEWR computed pursuant to paragraph (a) of this section, the higher prevailing wage rate shall be offered and paid to all workers by employers seeking temporary alien agricultural labor certification for that agricultural activity and area.

(c) *Federal minimum wage rate.* In no event shall an AEWR computed pursuant to this section be lower than the hourly wage rate published in 29 U.S.C. 206(a)(1) and currently in effect.

[52 FR 20507, June 1, 1987, as amended at 54 FR 28046, July 5, 1989]

§ 655.108 H-2A applications involving fraud or willful misrepresentation.

(a) *Referral for investigation.* If possible fraud or willful misrepresentation involving a temporary alien agricultural labor certification application is discovered prior to a final temporary